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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 177.

HARRISON GOODWIN AND ELIZABETH GOODWIN, PLAINTIFFS IN ERROR,

vs.

THE COLORADO MORTGAGE AND INVESTMENT COMPANY OF LONDON (LIMITED).

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

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1 Pleas in the circuit court of the United States for the district of Colorado, sitting at Denver.

Be it remembered that heretofore, and on, to wit, the twenty-sixth day of June, A. D. 1879, came Platt Rogers, esq., an attorney of record of said court, and filed in said court a complaint, wherein the Colorado Mortgage and Investment Company of London (Limited) is plaintiff and Elizabeth Goodwin, James R. Mason, Samuel Basher, and Harrison Goodwin are defendants.

And the said complaint is in words and figures as follows, to wit:

Complaint.

In the circuit court of the United States for the district of Colorado.

THE COLORADO MORTGAGE AND INVESTMENT Company of London (Limited), plaintiffs,
vs.
ELIZABETH GOODWIN, JAMES R. MASON, SAMUEL BASHER, & HARRISON GOODWIN, defendants.

The plaintiff' above named complain of the defendants, and allege:

2 I. That the plaintiffs are a corporation duly chartered, organized, and existing under and by virtue of the statutes of the United Kingdom of Great Britain and Ireland, and that the principal office and place of business of said corporation are in the city of London, in the kingdom aforesaid.

II. That the defendants are residents and citizens of the State of Colorado.

III. That the plaintiffs are seized in fee of the following-described premises, namely: The Southwest one-quarter of Section five and the East one-half of the Southeast one-quarter of Section six (6), in Township two (2) North, of Range sixty-nine (69) West of sixth Prin. Meridian, of the value of five thousand dollars.

IV. That the defendants are in possession thereof, and unlawfully withhold the same from the plaintiffs, to their damage of five hundred dollars.

Wherefore the plaintiffs demand judgment for the possession of said premises and five hundred dollars, the plaintiffs' damages by the withholding of the same, together with costs.

(Signed) PLATT ROGERS,
Plaintiffs' Att'y.

STATE OF COLORADO,
County of Arapahoe, ss:

3 James Duff, being duly sworn, on his oath says:

I. That he is the agent of the Colorado Mortgage and Investment Company of London, the plaintiffs above named.

II. That the foregoing complaint is true of his own knowledge.

(Signed) JAMES DUFF.

3961——1

Sworn to before me this 26th day of June, A. D. 1879.
[NOTARIAL SEAL.] (Signed) WALTER P. MILLER,
Notary Public.

(Endorsed:) G. D. No. 269. T. D. No. . In the circuit court of the United States, district of Colorado. The Colorado Mortgage & Investment Co. of London, plaintiffs, vs. Elizabeth Goodwin et al., defendants. Complaint. Filed Jun. 26, 1879. (Signed) Edward F. Bishop, clerk. Platt Rogers (Boulder), Colorado; Butler, Wright & King, pl't'ffs' attorneys.

And thereupon, and on the same day, a writ of summons was issued, in words and figures as follows, to wit:

4, 5 *Summons.*

In the circuit court of the United States for the district of Colorado.

UNITED STATES OF AMERICA,
District of Colorado, ss:

THE COLORADO MORTGAGE AND INVESTMENT Company of London (Limited), plaintiff,
versus
ELIZABETH GOODWIN, JAMES R. MASON, Samuel Basher, and Harrison Goodwin, defendant.

Complaint filed in the clerk's office this 26th day of June, A. D. 1879.

The President of the United States of America to Elizabeth Goodwin, James R. Mason, Samuel Basher, and Harrison Goodwin, greeting:

You and each of you are hereby notified that an action has been brought in said court by the Colorado Mortgage and Investment Company of London (Limited), plaintiff, against you as defendants to recover the possession of certain real estate, to wit: The Southwest one-quarter of section five and the East one-half of the Southeast one-quarter of Section six (6), in Township two (2) North, of Range sixty-nine (69) West of sixth Prin. Meridian, as more particularly appears from the complaint filed herein, and to which reference is here made, for the sum of five hundred dollars damages for the withholding of the same, together with the costs of this suit.

You are hereby required to appear and demur or answer to the complaint filed in said action, in said court, within ten days (exclusive of the day of service) after this summons shall be served on you, if such service shall be made within the county of Arapahoe; otherwise within forty days from the day of service; and if you fail so to do the said plaintiff will take judgment against you by default, according to the prayer of the said complaint, and will apply to the courts for the relief demanded in the complaint.

Witness the honorable Morrison R. White, Chief Justice of the Supreme Court of the United States, and the seal of the said circuit court, at the city of Denver, in said district, this 26th day of June, A. D. 1879, and of the Independence of the United States the 103' year.

[SEAL U. S. CIRCUIT COURT.]
(Signed) EDWARD F. BISHOP, *Clerk*,
By , *Deputy Clerk.*

6 *Proof of service.*

UNITED STATES OF AMERICA,
District of Colorado, ss:

DENVER, COLO., *July* 3, *A. D.* 1879.

I hereby certify that I received the within writ on the 27' day of June, A. D. 1879, and that I have personally served the same upon Elizabeth Goodwin, Samuel Basher, Harmin Goodwin, three of the said defendants; by delivering to them personally a true copy of the within writ, at the day and time as follows: As to the above-named defendants at county of Boulder, on the first day of July, A. D. 1879, served the same on James R. Mason by delivering a true copy of the within writ to the wife of James R. Mason at his usual place of abode in Boulder County, Colorado, she being a member of his family above the age of 16 years.

This writ therefore returned served, as the law directs, this day of , A. D. 18 .

(Signed) P. P. WILCOX, *Marshal*,
By , *Deputy Marshal.*

Marshal's fees: Service 4 def'ts, @ $2 ea., $8.00; fare Longmont & return, $5.80; hotel, $1.00; livery to serve 2 def'ts, $2.50; bus, 50, per diem, 2.00, $2.50—total, $19.80. Paid by plaintiffs.

(Endorsed:) Gen. No. 269. Circuit court of the United States, district of Colorado. The Colo. Mortg'e & Investment Co., plaintiff, versus Elizabeth Goodwin et al. defendants. Summons. Filed this 2d day of July, A. D. 1879. (Signed) Edward F. Bishop, clerk, by , deputy clerk. Platt Rogers, Boulder; Butler, Wright & King, of Denver, attorney' for plaintiff.

7 And afterwards, and on, to wit, the 9th day of August, A. D. 1879, came Elizabeth Goodwin and Harrison , two of said defendants, by Messrs. Wells, Smith and Macon, their attorneys, and file in said court and in said cause their answer to said plaintiff's complaint. And said answer is in words and figures as follows, to wit:

Answer of Elizabeth and Harrison Goodwin.

UNITED STATES OF AMERICA,
District of Colorado, ss:

In the circuit court of the United States within and for said district.

THE COLORADO MORTGAGE AND INVESTMENT Company of London (Limited), plaintiff,
vs.
ELIZABETH GOODWIN, JAMES R. MASON, SAMUEL Bashee, and Harrison Goodwin, defendants.

The said defendants Elizabeth Goodwin and Harrison Goodwin, answering to the said complaint, for a first defense say:

That whether the said plaintiff is a corporation or not these defendants

have not and cannot obtain knowledge or information sufficient to found a belief; but these defendants admit and say that if the said plaintiff
8 is a corporation, it is organized and exists solely under the statutes of the United Kingdom of Great Britain and Ireland and not otherwise.

And for a second defense herein, these defendants, answering, deny that the said plaintiff is or ever was seized in fee or otherwise of the lands in the complaint mentioned or any part thereof, or that said plaintiff is entitled to the possession of said lands or any part of the same.

These defendants admit that the said Harrison Goodwin and Elizabeth Goodwin are in possession of said lands and withhold the same from the plaintiff, but deny that such withholding is unlawful.

These defendants, further answering, say that until the granting thereof by the United States, as hereinafter next mentioned, the whole of said premises in the complaint described were parcel of the public domain of the United States; that long before the institution of the plaintiff's action, the whole of said premises, except the said Southwest quarter of the Southwest quarter of said Section five, were, by letters patent of the United States, granted to the said Harrison Goodwin in fee-simple absolute; and the said Southwest quarter of the Southwest quarter of said Section five had been in like manner granted to the Denver Pacific Railway and Telegraph Company, and the said Harrison Goodwin had acquired an estate in fee-simple absolute to the said last-mentioned premises by divers grants and conveyances in due form of law, by means of which said several letters patent and conveyances the said Harrison Goodwin, at
9 the time of the institution of the plaintiff's action, was and long before had been the owner in fee-simple absolute of the whole of the said premises in the complaint mentioned, and, being so entitled thereto, the said Harrison Goodwin and the said Elizabeth Goodwin, who then was and still is the lawful wife of the said Harrison, then were and still are lawfully in the possession of the said premises, and withhold and still lawfully withhold the same from the plaintiff.

(Signed) ELIZABETH GOODWIN.
(Signed) H. GOODWIN.

(Signed) WELLS, SMITH & MACON,
Of Denver, Def'ts' Att'ys.

UNITED STATES OF AMERICA,
District of Colorado, ss:

Elizabeth Goodwin, being first duly sworn, says on oath that she is one of the defendants in the above-entitled suit; that she has read the foregoing answer, and knows the contents thereof, and the same is true of her own knowledge, except as to those matters which are therein stated on the information and belief of the defendants, and as to those matters she believes it to be true.

(Signed) ELIZABETH GOODWIN.

Subscribed and sworn to before the undersigned, a notary public in and for the county of Boulder, in the State of Colorado, at said Boulder County, this 8th day of August, 1879 Witness my hand and notarial seal.

[NOTARIAL SEAL.] (Signed) JOHN H. WELLS,
Notary Public, Boulder Co., Colorado.

10 (Endorsed:) 269. Circuit court of the United States, district of Colorado. The Colorado Mortgage and Investment Company, &c. vs. Elizabeth Goodwin et al. Answer of Elizabeth & Harrison Goodwin. Filed Aug. 9, 1879. (Signed) Edward F. Bishop, clerk. Wells, Smith & Macon, for def'ts Goodwin.

And afterwards, and on the same day, to wit, the 9th day of August, A. D. 1879, came Elizabeth Goodwin, one of the said defendants, by Messrs. Wells, Smith and Macon, and files in said court and in said cause her separate answer to said plaintiff's complaint; and said separate answer is in words and figures as follows, to wit:

Answer of Elizabeth Goodwin.

UNITED STATES OF AMERICA,
District of Colorado, ss:

In the circuit court of the United States within and for said district.

THE COLORADO MORTGAGE AND INVESTMENT Company of London (Limited), plaintiff,
vs.
ELIZABETH GOODWIN, JAMES R. MASON, SAMUEL BASHEE, and HARRISON GOODWIN, defendants.

11 The separate answer of the said defendant Elizabeth Goodwin to the plaintiff's complaint herein.

This defendant, answering to the said complaint, saith that heretofore, and on the 23d day of February, A. D. 1878, and long before that, the said Harrison Goodwin was, and ever since hath been, and still is, a householder and the head of a family, residing in the State of Colorado, and this defendant was, and ever since hath been, and still is, the lawful wife of the said Harrison Goodwin; and on the same day and year aforesaid, and long before and ever since, this defendant and the said Harrison Goodwin, as man and wife, were residing together upon and occupying the same lands and premises in the complaint described as their homestead; and on or about the said 23d day of February the said Harrison Goodwin, while this defendant was together with him so occupying the said premises, executed a certain mortgage-deed of the said premises to one David H. Moffat, jr., for securing certain moneys in the said mortgage-deed recited to be due and owning by the said Harrison Goodwin to the said plaintiff; and by virtue of the said mortgage-deed and a certain conveyance executed, or alleged to have been executed, by the said David H. Moffat, jr., unto the plaintiff, under or by pretense of some power or authority contained in the said mortgage-deed, and not otherwise, the said plaintiff claims to be entitled to the said premises.

12 But this defendant, in fact, saith that the officer taking the acknowledgement of the said mortgage-deed did not fully apprise this defendant of her right in respect to the said premises, nor of the effect of her signing such mortgage-deed; nor did this defendant freely and

voluntarily and separate and apart from her husband, or otherwise, sign or acknowledge the said mortgage-deed.

(Signed) ELIZABETH GOODWIN.
(Signed) H. GOODWIN.

(Signed) WELLS, SMITH & MACON,
Of Denver, Def'ts' Att'ys.

UNITED STATES OF AMERICA,
District of Colorado, ss:

Elizabeth Goodwin, being first duly sworn, saith on oath that she is one of the defendants in the above-entitled suit; that she has read the foregoing answer, and knows the contents thereof, and the same is true of her own knowledge, except as to those matters which are therein stated on information and belief, and as to those matters she believes it to be true.

(Signed) ELIZABETH GOODWIN.

Subscribed and sworn to before the undersigned, a notary public in and for the county of Boulder, in the State of Colorado, at said Boulder County, this 8th day of August, A. D. 1879. Witness my hand and notarial seal.

[NOTARIAL SEAL.] (Signed) JOHN H. WELLS,
Notary Public, Boulder Co., Colorado.

13 (Endorsed:) 269. Circuit court, United States, district of Colorado. The Colorado Mortgage and Investment Company, &c., vs. Elizabeth Goodwin et al. Separate answer of Elizabeth Goodwin. Filed Aug. 9, 1879. (Signed) Edward F. Bishop, clerk.

And afterwards, and on, to wit, the 11th day of October, A. D. 1879, the same being one of the regular juridical days of the October term, A. D. 1879, of said court—present the honorable Moses Hallett, district judge—the following proceeding was had and entered of record in said court & in said cause, to wit:

Order: Demurrer to separate ans. sustained, &c.

THE COLORADO MORTGAGE AND INVESTMENT Company *vs.* ELIZABETH GOODWIN, JAMES R. MASON, SAMUEL BASHER, and HARRISON GOODWIN.	269. For possession of specific real property, &c.

At this day comes the said plaintiff, by Hugh Butler, esq., its attorney, and the said defendants Elizabeth and Harrison Goodwin, by E. F. Wells, esq., their attorney, also come:

And the demurrer of the said plaintiffs to the separate answer of Elizabeth Goodwin, and the demurrer to the joint answer of Elizabeth
14 and Harrison Goodwin, respectively, having heretofore come on to be heard, and having been argued by counsel, and the court being now sufficiently advised in the premises:

It seemeth to the court here that the said separate answer of Elizabeth Goodwin is not sufficient in law, and that the said joint answer of Elizabeth Goodwin and Harrison Goodwin is sufficient in law.

And afterwards, and on, to wit, the 13th day of October, A. D. 1879, the same being one of the regular juridical days of the October term, A. D. 1879, of said court—present the honorable Moses Hallet, district judge—the following proceeding was had and entered of record in said court and in said cause, to wit:

Order: Leave to Elizabeth Goodwin to amend her separate ans.

THE COLORADO MORTGAGE AND INVESTMENT Company
vs.
ELIZABETH GOODWIN ET AL.
269. For possession of specific real property, &c.

At this day comes the said plaintiff, by H. Butler, esq., its attorney, and the said defendants Elizabeth Goodwin and Harrison Goodwin, by E. T. Wells, esq., their attorney, also come:

And thereupon, on her motion, it is ordered that the said defendant Elizabeth Goodwin have leave to amend her separate answer herein, as she shall be advised, within the six (6) days from this day.

15 And afterwards, and on, to wit, the 17th day of October, A. D. 1879, came the said defendant, Elizabeth Goodwin, by Messrs. Wells, Smith, and Macon, her attorneys, and files in said court and in said cause her amendment to her separate answer. And said amendment is in words and figures as follows, to wit:

Amendment to separate answer of Elizabeth Goodwin.

UNITED STATES OF AMERICA,
District of Colorado, ss:

In the circuit court of the United States within and for the said district.

THE COLORADO MORTGAGE AND INVESTMENT Company of London (Limited), plaintiff,
vs.
ELIZABETH GOODWIN, JAMES R. MASON, SAMUEL BASHER, and HARRISON GOODWIN, defendants.

At this day comes the said defendant Elizabeth Goodwin, and by leave of the court, amends the separate *the separate* answer by her heretofore filed herein by adding thereto the allegation following, to wit:

And this defendant in fact saith that at the time of the execution of the said mortgage-deed, the plaintiff well knew that the said lands and premises were occupied by the said Harrison and Elizabeth as their home-
16 stead; and that the said Harrison was a householder, and that this defendant was the lawful wife of the said Harrison and residing with him.

(Signed) WELLS, SMITH & MACON,
Def'ts' Att'y.

UNITED STATES OF AMERICA,
District of Colorado, ss:

Elizabeth Goodwin, being first duly sworn, saith on oath that she is one of the defendants in the above ; that she hath read the foregoing amendment to the separate answer of herself heretofore filed in said cause, and knows the contents thereof; and the same is true of her own knowledge, except as to those matters which are therein stated on the information and belief of the defendant, and as to those matters she believes it to be true.

(Signed) ELIZABETH GOODWIN.

Subscribed and sworn to before the undersigned, a notary public in and for the county of Boulder, in the State of Colorado, at said Boulder County, this 16th day of October, A. D. 1879. Witness my hand and notarial seal.

[NOTARIAL SEAL.] (Signed) JOHN H. WELLS,
Notary Public.

(Endorsed:) 269. Circuit court, United States, district of Colorado. The Colorado Mortgage and Investment Company, &c., vs. Elizabeth Goodwin et al. Amendment to separate answer of Elizabeth Goodwin. Filed Oct. 17, 1879. (Signed) Edward F. Bishop, clerk.

17 And afterwards, and on, to wit, the 22d day of October, A. D. 1879, came the said plaintiff, by Messrs. Butler, Wright, and King, its attorneys, and filed in said court and in said cause its demurrer to the amended answer of Elizabeth Goodwin, defendant. And the said demurrer is in words and figures as follows, to wit:

Demurrer to amended answer of Elizabeth Goodwin.

UNITED STATES OF AMERICA,
District of Colorado, ss:

In the circuit court of the United States for the district aforesaid. Oct. term, A. D. 1879.

COLORADO MORTGAGE AND INVESTMENT COMPANY of London (Limited), plaintiff,
vs.
HARRISON GOODWIN, ELIZABETH GOODWIN, ET al., defendants.

The demurrer of the plaintiff, to the amended answer of Elizabeth Goodwin, defendant.

And now comes the said plaintiff by Butler, Wright, and King, its attorneys, and demurs to the amended answer of the said defendant, Elizabeth Goodwin, and for cause states:

I. The said amended answer fails to state sufficient facts to constitute a defense.

18 II. The allegation in the amendment to said answer is insufficient, irrelevant, and immaterial, and ought to be stricken out.

Wherefore plaintiff prays judgment as in the complaint demanded.

(Signed) BUTLER, WRIGHT & KING,
Pl'ff's Att'ys.

(Endorsed:) No. 269. Colorado Mortgage and Investment Co. vs. Harrison Goodwin et al. Demurrer to amended answer. Filed Oct. 22, 1879. (Signed) Edward F. Bishop, clerk. Butler, W., & King, pl'ff's att'ys.

And afterwards, and on, to wit, the 3d day of November, A. D. 1879, the same being one of the regular juridical days of the October term, A. D. 1879, of said court—present the honorable Moses Hallett, district judge—the following proceeding was had and entered of record in said court and in said cause, to wit:

19 *Order: Demurrer to amended ans. of Elizabeth sustained.*

THE COLORADO MORTGAGE AND INVESTMENT Company, *vs.* ELIZABETH GOODWIN ET AL.	269.	For possession, &c.

At this day comes the said plaintiff by Hugh Butler, esq., its attorney, and the said defendants Elizabeth Goodwin and Harrison Goodwin, by E. T. Wells, esq., their attorney, also come:

And the demurrer of the said plaintiff to the separate answer, as amended, of the said defendant Elizabeth Goodwin coming on now to be heard, and the court being now sufficiently advised in the premises, it seemeth to the court here that the said separate answer as amended is not sufficient in law.

And afterwards, and on, to wit, the 10th day of November, A. D 1879, came the said plaintiff, by Messrs. Butler, Wright and King, its attorneys, and filed in said court and in said cause its replication to the answer of Elizabeth Goodwin and Harrison Goodwin. And said replication is in words and figures as follows, to wit:

20 *Replication.*

UNITED STATES OF AMERICA,
District of Colorado, ss:

In the circuit court of the United States within and for said district.

THE COLORADO MORTGAGE AND INVESTMENT Company of London (Limited), plaintiff,
vs.
ELIZABETH GOODWIN, JAMES R. MASON, Samuel Basher and Harrison Goodwin, defendants.

The said plaintiff, by way of replication to the answer of the said defendants Harrison Goodwin and Elizabeth Goodwin, says that it admits that the premises in said complaint mentioned were originally a part of the public domain of the United States, and that the said defendant Harrison Goodwin, by virtue of a conveyance from the Denver Pacific Railway and Telegraph Company, became the owner of said premises in fee-simple absolute, but plaintiff denies that he was such owner at the time of the institution of this suit. Plaintiff further alleges that on the first day of

March, A. D. 1878, the said defendant Harrison Goodwin, being then the sole owner of the said premises as aforesaid, became indebted to the plaintiff in the sum of four thousand dollars ($4,000.00) in gold coin of
21 the United States of America for money that day actually loaned to said defendant, and that on said day the said defendant executed and delivered to the plaintiff his certain promissory note in and by which he promised to pay to the said plaintiff one year after the date thereof in gold coin the sum of one thousand dollars ($1,000.00), together with interest thereon, as evidenced by certain interest promissory notes, executed and delivered with said first-mentioned promissory note; and at the same time executed and delivered to plaintiff his certain other promissory note in and by which he promised to pay to said plaintiff or order the further sum of three thousand dollars ($3,000.00) in gold coin of the United States three years after the date thereof, together with interest thereon, as evidenced by certain interest promissory notes executed and delivered with said last-mentioned principal promissory note, and that at the same time, for the purpose of securing the repayment of the money loaned as aforesaid according to the tenor and effect of the said principal and interest promissory notes, made, executed, delivered and acknowledged a certain mortgage deed, commonly called a trust-deed, in and by which he conveyed to one David H. Moffatt, jr., the premises mentioned and described in the said complaint, in trust, for the purpose of securing the payment of said promissory notes; that in and by said deed the said David H. Moffatt, jr., or his successor in trust, was authorized and empowered in case
22 of default in the payment of the said principal promissory note, or in case of default in the payment of any of the said interest promissory notes, to advertise said premises for sale, and to sell same at public auction at the front door of the post-office, in the city of Boulder, county of Boulder, State of Colorado, after having given four (4) weeks' notice of the time and place of such sale by advertisement in any newspaper published in the county of Boulder, and to make, execute, and deliver to the purchaser or purchasers at such sale a good and sufficient deed for the premises sold.

And plaintiff further avers that on the 27th of February, A. D. 1879, the said defendant Harrison Goodwin had not paid the said first-mentioned principal promissory note for the said sum of one thousand dollars ($1,000.00) or any part thereof, and on said day was also in default in respect to the payment of any interest on said note for said sum of one thousand dollars ($1,000.00), and on said note for said sum of three thousand dollars ($3,000.00), which accrued, and became since the twenty-third day of May, A. D. 1878, that is to say, he had wholly failed to pay the several interest promisoory notes which became due and payable after said twenty-third day of May, A. D. 1878, and all of which were due and unpaid on the said twenty-seventh day of February, A. D. 1879.

And plaintiff further avers that on the said twenty-seventh day
23 of February, 1879, the said defendant Harrison Goodwin, having made default in the payment of said principal promissory note for said sum of one thousand dollars ($1,000.00) and the said several interest promissory notes before mentioned, the said David H. Moffatt, jr., as he lawfully might, caused to be inserted and published in a weekly newspaper printed and published in the county of Boulder aforesaid a notice and ad-

vertisement in which he stated that by virtue of the power in him vested by said trust-deed, he would expose for sale at public auction to the highest and best bidder for cash at the front door of the post-office, in the town of Boulder, in the county of Boulder aforesaid, the property mentioned in said trust-deed, on the twenty-ninth day of March, A. D. 1879, at the hour of twelve o'clock noon of said day, and did cause said notice and advertisement to be published in said newspaper for four successive weeks, the first insertion and publication of the same being on the twenty-seventh day of February, A. D. 1879, and the last insertion and publication of the same on the twenty-seventh day of March, A. D. 1879.

And plaintiff further avers that on the twenty-ninth day of March, A. D. 1879, at the hour of twelve noon of said day, or a few minutes thereafter, the said defendant Harrison Goodwin being still in default as aforesaid, exposed and offered the property in said complaint mentioned at public auction for sale to the highest and best bidder for cash for the whole or any part thereof; that at said time and place the plaintiff was the highest and best bidder for all of the aforesaid property, and thereupon the
24 said trustee, as he lawfully might do, struck off and sold the said property to the plaintiff, it being the highest and best bidder, therefor; and afterwards, to wit, on the ninth day of April, A. D. 1879, said David H. Moffatt, jr., trustee, executed, acknowledged, and delivered a deed, commonly called a trustee's deed, in and by which he conveyed to the plaintiff, its successors and assigns forever, the said property in said trust-deed and in said complaint mentioned, by reason whereof the plaintiff then became the owner of the said property and every part thereof.

Wherefore it demands judgment as in said complaint it has heretofore prayed.

(Signed) BUTLER, WRIGHT & KING,
Pl'ff's Att'ys.

STATE OF COLORADO,
County of Arapahoe, ss:

James Duff, being first duly sworn, deposes and says that he is the agent and general manager of the plaintiff in the above-entitled cause; that he has read the foregoing replication and knows the contents thereof, and that the same is true.

(Signed) JAMES DUFF.

Subscribed and sworn to before me this tenth day of November, A. D. 1879.

[NOTARIAL SEAL.] (Signed) WALTER P. MILLER,
Notary Public.

25 (Endorsed) No. 269. U. S. circuit court, district of Colorado. The Colorado Mortgage and Investment Company (Limited) against Elizabeth Goodwin et al. Replication to answer of Elizabeth & Harrison Goodwin. Filed Nov. 10, 1879. (Signed) Edward F. Bishop, clerk. Butler, Wright & King, for plaintiff.

And afterwards, and on, to wit, the 29th day of November, A. D. 1879, the same being one of the regular juridical days of the October term, A. D. 1879, of said court—present the honorable Moses Hallett—the following

proceeding were had and entered of record in said court and in said cause, to wit:

Trial.

THE COLORADO MORTGAGE AND INVESTMENT Company *vs.* ELIZABETH GOODWIN ET AL. } 269. For possession of specific real property, &c.

At this day comes the said plaintiff, by Platt Rogers, esq., its attorney, and the said defendants Elizabeth Goodwin and Harrison Goodwin, by E. L. Smith, esq., their attorney, also come.

And thereupon comes a jury, to wit, Charles H. Ramer, Thomas
26 Blythe, Joseph Mason, James Simmons, George A. Pugh, Asa M. House, Nathan Haskins, James B. Lycan, Adison Avery, J. M. McKeen, Bartholomew Robbins, M. H. Root, good and lawful men, and they are duly selected and tried, impaneled, and sworn to well and truly try the issues herein joined and a true verdict give according to the evidence.

And the said jurors, having heard the evidence produced herein and the instructions of the court, upon their oaths do say they find the issues herein joined for the said plaintiff, and that it is the owner in fee of the premises described in the complaint herein.

And afterwards, and on, to wit, the 5th day of December, A. D. 1879, the same being one of the regular juridical days of the October term, A. D. 1879, of said court—present the honorable Moses Hallett, district judge—the following proceeding was had and entered of record in said court and in said cause, to wit:

Order: Motion for new trial denied.

THE COLORADO MORTGAGE AND INVESTMENT Company *vs.* ELIZABETH GOODWIN ET AL. } 269. For possession of specific real property, &c.

At this day comes the said plaintiff, by Hugh Butler, esq., its attorney, and the said defendants Elizabeth Goodwin and Harrison Goodwin,
27 by E. L. Smith, esq., their attorney, also come.

And the motion of the said defendants for a new trial of the issues herein coming on now to be heard, is argued by counsel, and the court being now sufficiently advised in the premises, it is ordered by the court, for good and sufficient reasons to the court appearing, that the said motion be denied.

Wherefore let judgment be entered herein upon the verdict of the jury in favor of the said plaintiff and against the said defendants.

And afterwards, and on the same day, to wit, the 5th day of December, A. D. 1879, judgment was entered in the judgment book of said court, and in said cause in words and figures as follows, to wit:

Judgment.

THE COLORADO MORTGAGE AND INVESTMENT Company *vs.* ELIZABETH GOODWIN, JAMES R. MASON, Samuel Basher, and Harrison Goodwin.	269. For possession of specific real property for damages.

On this 5th day of December, A. D. 1879, the same being one of the regular jurdical days of the October term, A. D. 1879, of said court, there being present the honorable Moses Hallett, district judge:

28 It is considered by the court that the said plaintiff do have and recover of and from the said defendants possession of the property, lands, and tenements in its said complaint mentioned, to wit: The Southwest one-quarter of Section five, and the East one-half of the Southeast one-quarter of Section six (6), in Township two (2) North, of Range sixty-nine (69) West of sixth Principal Meridian, and that it have a writ of possession therefor.

It is further considered by the court that the said plaintiff do have and recover of and from the said defendants its costs by it in this behalf laid out and expended, to be taxed, and have execution therefor.

And afterwards, and on, to wit, the 6th day of December, A. D. 1879, the same being one of the regular juridical days of the October term, A D. 1879, of said court—present the honorable Moses Hallett, district judge—the following proceeding was had and entered of record in said court and said cause, to wit:

Order: Judgment vacated, 2d trial granted, &c.

THE COLORADO MORTGAGE AND INVESTMENT Company *vs.* ELIZABETH GOODWIN ET AL.	269. For possession of specific real property, &c.

At this day comes the said plaintiff, by Hugh Butler, esq., its attorney, and the said defendants Elizabeth Goodwin and Harrison Goodwin, by E. T. Wells, esq., their attorney, also come.

29, 30 And thereupon the said defendants move the court to vacate the judgment had herein, and for a second trial of the issues herein, and it appearing to the court that the said defendants have fully paid and discharged the taxed costs herein; therefore,

It is ordered that the judgment of the court, lately and on the 5th instant had herein, be vacated and for naught held, and that a second trial of the issues herein be had, in pursuance of the statute in such case made and provided.

And thereupon, on motion of said defendants, it is ordered by the court that they have leave to file an additional defense here, as they shall be advised.

31 And afterwards, and on, to wit, the 11th day of May, A. D. 1880, came the said defendants Harrison Goodwin and Elizabeth

Goodwin, by Messrs. Wells, Smith, and Macon, their attorneys, and file in said court and in said cause their amended answer. And said amended answer is in words and figures as follows, to wit:

Amended answer of Harrison and Elizabeth Goodwin.

UNITED STATES OF AMERICA,
District of Colorado, ss:

In the circuit court of the United States within and for the said district.

THE COLORAD' MORTGAGE AND INVESTMENT Company of London (Limited,) plaintiff,
vs.
ELIZABETH GOODWIN, JAMES R. MASON, SAMUEL BASHER, and HARRISON GOODWIN, defendants.

At this day come the said defendants Harrison Goodwin and Elizabeth Goodwin, and by leave of the court for a third defense to plaintiff's action herein say:

These defendants admit that they are in possession of the said lands, and withhold the same from the plaintiff, but deny that such withholding is unlawful.

32 These defendants, further answering, say that until the grant thereof by the United States as hereinafter next mentioned the whole of said premises were parcel of the public domain of the United States; that long before the institution of the plaintiff's suit the whole of said premises except the Southwest quarter of the Southwest quarter of said Section five were by letters patent of the United States granted to the said Harrison Goodwin in fee-simple; and the said Southwest quarter of the Southwest quarter of said Section five had been in like manner granted to the Denver Pacific Railway and Telegraph Company, and by divers grants and conveyances in due form of law the same had been granted and conveyed to the said Harrison Goodwin; and by means of the said several letters patent, grants, and conveyances the said Harrison Goodwin at the time of the institution of the plaintiff's suit was and long before had been the owner in fee-simple absolute of the whole of said premises; and being so entitled thereunto and in possession thereof the said Harrison Goodwin, on or about the 28th day of February, A. D. 1878, by his certain writing in the similitude of deed of conveyance upon trusts by him assumed and pretended to be executed at the county of Boulder, in the State of Colorado, assumed and pretended to convey the said premises unto one David H. Maffat, jr., in trust to secure to the said plaint-

33 iff certain moneys in said pretended deed of trust recited to be due and payable to the said plaintiff; and afterwards, and on or about the 29th day of March last past, the said David H. Maffat, jr., by his certain writing in the similitude of a deed of conveyance assumed and pretended to convey the whole of said lands and premises to the plaintiff; by means of which said last-mentioned pretended deed of conveyance and not otherwise, as the defendants are informed and believe, the plaintiff claims to be entitled to possession of the said premises.

And the said defendants in fact say that the said plaintiff long before and at the time of the execution of the said pretended deed of conveyance of the said Harrison Goodwin unto the said David H. Maffat, jr., was and still is a foreign corporation, not organized or existing under any law of the State of Colorado, but organized and existing under the statutes of the United Kingdom of Great Britain and Ireland, and being such foreign corporation the said plaintiff, on or about the 29th day of August, A. D. 1877, caused to be filed in the office of the secretary of state of the said State of Colorado and in the office of the recorder of Arapahoe County a certain certificate in words and figures as follows, to wit:

We, the undersigned, president and secretary of the Colorado Mortgage and Investment Company of London (Limited), hereby certify that the principal place where the business of said corporation shall be car-
34 ried on in the State of Colorado shall be at Denver, in the county of Arapahoe, in said State, and that the general manager of said corporation residing at the said principal place of business is the agent upon whom process may be served in all suits that may be commenced against corporation.

In witnss whereof James W. Barclay, president of such corporation, and William Slingsby Ogle, secretary of such corporation, hereunto set their hands and cause the corporate seal of said corporation to be hereunto affixed, this 31st day of July, in the year of our Lord one thousand eight hundred and seventy-seven.

[CORPORATE SEAL.] JAMES W. BARCLAY, *President.*
WILLIAM S. OGLE, *Secretary.*

ALFRED GEORGE RENSHAW,
Director.

CONSULATE GENERAL OF THE UNITED STATES OF AMERICA,
London, England.

Be it remembered that on the 31st day of July, in the year of our Lord one thousand eight hundred and seventy-seven, before me, the undersigned vice and deputy consul-general, personally appeared James William Barclay, president, and William Slingsby Ogle, secretary, of the Colorado Mortgage and Investment Company of London (Limited), and then
35 and there acknowledged before me that they had made and signed the foregoing certificate and caused the corporate seal of the said company to be thereunto affixed for all the uses and purposes therein mentioned, and that the said certificate was so made, signed, and executed by them at the request and for the uses of said company, and for the uses and purposes expressed in said certificate, and that the same is also the act and deed of said company through the said president and secretary thereof.

In witness whereof I have hereunto set my hand and official notarial seal this 31st day of July, in the year of our Lord one thousand eight hundred and seventy-seven.

[CONSULAR & NOTARIAL SEAL.] I. NUNN,
Vice and Deputy Consul-General and Notary Public ex-officio of the United States of America at London, England.

And, save as aforesaid, the said plaintiff hath never at any time hitherto

cause' to be filed with the secretary of state of the State of Colorado, nor in the office of the recorder of any county in said State any certificate signed by the president and secretary of the said plaintiff, or acknowledged designating the principal place where the business of the said corporation shall be carried on in this State, or any authorized agent or agents in this State, residing at its principal place of business, upon whom process may be served; nor hath the said plaintiff at any time hitherto filed in the
36 office of the recorder of deeds of the said county of Boulder any such certificate whatsoever, signed by the president or secretary of the said plaintiff, designating the principal place where the business of plaintiff will be carried on in this State, or any authorized agent or agents in this State residing at its principal place of business, upon whom process may be served. And the defendants say that the said pretended conveyance by the said Harrison Goodwin so assumed and pretended to be executed to the said David H. Maffatt, jr., was executed and delivered at the said county of Boulder, and not elsewhere; and the monies therein recited to be payable to the plaintiff were monies by the said plaintiff lent to the said Harrison at the said county of Boulder contrary to the constitution of the State of Colorado and the statute in such case made and provided.

(Signed) WELLS, SMITH & MACON,
Def'ts' Att'ys.

Oath to above answer waived, but truth not admitted.
(Signed) HUGH BUTLER, *Pl'ff's Att'y.*

(Endorsed:) No. 269. Circuit court. The Colorado Mortgage, &c., Co. v. Harrison Goodwin & wife. Amended answer of H. & E. Goodwin. Filed May 11, 1880. (Signed) Edward F. Bishop, clerk.

37 And afterwards, and on the same day, to wit, the 11th day of May, A. D. 1880, came the said plaintiff by Messrs. Hugh Butler and Platt Rogers, its attorneys, and filed in said court and in said cause its demurrer to said amended answer of Elizabeth and Harrison Goodwin. And said demurrer is in words and figures as follows, to wit:

Demurrer to amended answer.

UNITED STATES OF AMERICA,
District of Colorado, ss:

The circuit court of the United States for the said district of Colorado, of the May term thereof, A. D. 1880.

COLORADO MORTGAGE AND INVESTMENT COMPANY, of London (Limited), plaintiff,
vs.
HARRISON GOODWIN, ELIZABETH GOODWIN, defendants.

And now comes the said plaintiff, by Hugh Butler and Platt Rogers, its attorneys, and demurs to all that part of the last-amended answer herein, except the last paragraph thereof, and for cause shows:

I. That said part of said answer contains nothing which by law the plaintiff is required to answer unto.

38 II. Because said part of said answer is wholly insufficient in law.

III. Because said answer shows that a certificate was filed with the secretary of the state of Colorado before the conveyance by defendant, Harrison Goodwin to Maffat, as trustee for plaintiff, and said certificate as set forth in haec verba therein, was a sufficient compliance with the constitution and laws of the State of Colorado.

IV. Because said answer fails to show that no proper certificate was filed with the clerk and recorder of the county of Arapahoe.

V. Because neither the constitution or laws of Colorado require that plaintiff, or any foreign corporation of like character, shall file in every county of this State in which it may occasionally do business a copy of the laws under which it was organized.

Wherefore it demands, as in its said complaint it has heretofore demanded, judgment against said defendants.

(Signed) HUGH BUTLER,
(Signed) PLATT ROGERS,
Pl'ff's Att'ys.

(Endorsed:) 269. Circuit court U. S. Col. M. & I. Co. vs. Harrison Goodwin et al. Demurrer to amended answer. Filed May 11, 1880. (Signed) Edward F. Bishop, clerk. Hugh Butler, Platt Rogers, Pl'ff's Att'ys.

39 And afterwards, and on the same day, to wit, the 11th day of May, A. D. 1880, came the said plaintiff, by Messrs. Hugh Butler and Platt Rogers, and filed in said court and in said cause its replication to the amended answer of said defendants Harrison Goodwin and Elizabeth Goodwin; and the said replication is in words and figures as follows, to wit:

Replication to amended answer.

UNITED STATES OF AMERICA,
District of Colorado, ss:

The circuit court of the United States for the district of Colorado, of the May term thereof, A. D. 1880.

COLORADO MORTGAGE AND INVESTMENT COMPANY of London (Limited), plaintiff,
vs.
HARRISON GOODWIN, ELIZABETH GOODWIN, defendants.

And now comes the said plaintiff, and by way of replication to the last paragraph of defendants' answer says: That the said defendant Harrison Goodwin applied to, at its office in the city of Denver, in the county of Arapahoe aforesaid, for a loan of money to the amount of four thousand

40 dollars, and did at said place offer to secure the repayment of said sum of money by executing a deed, commonly called a trust deed, upon the property mentioned in said complaint, to such person as trustee, and in such manner and form as the said plaintiff might indicate or require, and the said plaintiff at said place and not elsewhere did accept the offer of said defendant, and did at said place, and not elsewhere, agree to loan to said defendant, upon the security aforesaid, the said sum of money, according to the terms and conditions of the trust deed in said answer mentioned.

And the said plaintiff avers that by the terms of said offer made by said defendant and accepted by said plaintiff, and by the terms and conditions of the loan thereafter made by said plaintiff to said defendant in pursuance of such offer made by defendant, the said defendant did agree to pay the principal sum thereof and the interest thereon according to the terms and conditions of said loan, at Denver, in said county of Arapahoe.

And the said plaintiff further avers that at the request and for the benefit and convenience of said defendant it did agree that the said trust deed should be executed, acknowledged, and delivered at Boulder County, and that upon the execution and delivery of said trust deed, and the note secured thereby, the said sum of money so loaned as aforesaid should
41 be paid to him at said county of Boulder instead of being paid at its said office in said city of Denver.

Wherefore plaintiff demands judgment against the said defendants, as in its complaint it has heretofore demanded.

(Signed) HUGH BUTLER &
(Signed) PLATT ROGERS,
Pl'ff's Att'ys.

Verification waived, but truth not admitted.
(Signed) WELLS, SMITH & MACON,
Defendants' Attorneys.

(Endorsed:) 269. Circuit court U. S. Col. M. & I. Co. vs. Harrison Goodwin et al. Replication to amended answer. Filed May 11, 1880. (Singed) Edward F. Bishop, clerk. Hugh Butler, Platt Rogers, pl'ff's att'ys.

And afterwards, and on, to wit, the 12th day of May, A. D. 1880, the same being one of the regular juridical days of the May term, A. D. 1880, of said court—present the honorable Moses Hallett, district judge—the following proceeding was had and entered of record in said court and in said cause, to wit:

42 *Order: Demurrer to last amended ans. sustained.*

THE COLORADO MORTGAGE AND INVESTMENT Company *vs.* ELIZABETH GOODWIN, JAMES R. MASON, Samuel Basher, and Harrison Goodwin.	269. For possession of specific real property, and for damages.

At this day comes the said plaintiff, by Hugh Butler, esq., its attorney,

and the said defendants, Elizabeth Goodwin and Harrison Goodwin, by E. L. Smith, esq., their attorney, also come.

And the demurrer of the said plainttff to the last-amended answer of the said defendants Elizabeth Goodwin and Harrison Goodwin, filed herein on the 11th instant, coming on now to be heard, is argued by counsel, and the court being now sufficiently advised in the premises, it seemeth to the court here that the said amended answer is not sufficient in law, and the demurrer is sustained.

And afterwards, and on the same day, to wit, the 12th day of May, A. D. 1880, came the said plaintiff, by Hugh Butler, esq., its attorney, and files in this court and in this cause a certain stipulation between the parties hereto for the trial of this cause before the court without a jury. And said stipulation is in words and figures as follows, to wit:

43 *Stipulation for trial by the court.*

UNITED STATES OF AMERICA,
District of Colorado, ss:

In the circuit court of the United States for the said district of Colorado, of the May term t'ereof, A. D. 1880.

COLORADO MORTGAGE AND INVESTMENT CO., of London (Limited), plaintiff,
vs.
HARRISON GOODWIN, ELIZABETH GOODWIN, defendants.

It is hereby stipulated and agreed, by and between the parties hereto that the issues of fact in the above-entitled cause be tried by the court without a jury, and that the findings of the court shall have the same force and effect as the verdict of a jury.

(Signed) HUGH BUTLER,
(Signed) PLATT ROGERS, *Pl'ff's Att'ys.*
(Signed) WELLS, SMITH & MACON,
Def'ts' Att'ys.

(Endorsed:) No. 269. Colorado Mortgage & Investment Co., of London, vs. Harrison Goodwin et al. Stipulation for trial. Filed May 12, 1880. (Signed) Edward F. Bishop, clerk. Hugh Butler, Platt Rogers, pl'ff's att'ys.

44 And afterwards, and on the same day, to wit, the 12th day of May, A. D. 1880, the same being one of the regular juridical days of the May term, A. D. 1880, of said court—present the honorable Moses Hallett, district judge—the following proceeding was had and entered of record in said court and in said cause, to wit:

Second trial.

THE COLORADO MORTGAGE AND INVESTMENT Company *vs.* ELIZABETH GOODWIN, JAMES R. MASON, Samuel Basher, and Harrison Goodwin.	269. For possession of specific real property, and for damages.

At this day comes the said plaintiff, by Hugh Butler, esq., its attorney, and the said defendants Elizabeth Goodwin and Harrison Goodwin, by E. L. Smith, esq., their attorney, also come.

And this cause now coming on to be tried by the court without a jury, in pursuance of a written stipulation thereto filed herein, and the court, having heard the evidence produced herein, doth find the issues herein joined for the plaintiff.

Wherefore, on motion of the said plaintiff, let judgment be entered accordingly in favor of the said plaintiff and against the said defendants.

45 And afterwards, and on the same day, to wit, the 12th day of May, A. D. 1880, judgment was entered in the judgment book of said court and in said cause in words and figures as follows, to wit:

Judgment.

THE COLORADO MORTGAGE AND INVESTMENT Company *vs.* ELIZABETH GOODWIN, JAMES R. MASON, Samuel Basher, and Harrison Goodwin.	269. For possession of specific real property & for damages.

On this the 12th day of May, A. D. 1880, the same being one of the regular juridical days of the May term, A. D. 1880, of said court, there being present, the Honorable Moses Hallett, district judge:

It is considered by the court that the said plaintiff do have and recover of and from the said defendants possession of the property, lands, and tenements in its said complaint mentioned, to wit: The Southwest one-quarter of Section *of Section* five, and the East one-half of the Southeast one-quarter of Section six (6), in Township two (2) North of Range sixty-nine (69) West of sixth Principal Meridian, and that it have a writ of possession therefor.

It is further considered by the court that the said plaintiff do have and recover of and from the said defendants its costs by it in this behalf laid out and expended, to be taxed, and have execution therefor.

46 And afterwards, and on, to wit, the 22d day of May, A. D. 1880, came the said defendants Elizabeth Goodwin and Harrison, by E. T. Wells, esq., their attorney, and file in said court and in said cause their bill of exceptions preserved by them on the trial of this cause. And said bill of exceptions is in words and figures as follows, to wit:

Bill of exceptions.

THE UNITED STATES,
District of Colorado:

In the circuit of the United States of the May term, A. D. 1880.

THE COLORADO MORTGAGE AND INVESTMENT Company
vs.
HARRISON GOODWIN AND ELIZBETH GOODWIN et als.

Be it remembered that on this 12' day of May, A. D. 1880, at this same term of the court came on to be tried the issues of fact herein joined before the Honorable Moses Hallett, district judge of said district, then in said court presiding, without a jury, in pursuance of the stipulation in writing of counsel.

47 Thereupon the plaintiff, to maintain the issue on his part, gave in evidence to the jury the following documentary testimony, to wit:

1st. An application by the defendant Harrison Goodwin to the plaintiff for a loan of $4,000, to be secured on the lands in controversy, and payable in five years, with interest, quarterly. This instrument bore date at Denver, Colorado, January 23d, 1878, and stated that all payments must be made there.

2nd. Two promissory notes, each dated Boulder, Colorado, 23rd Feb'y, 1878, for the aggregate sum of $4,000, payable in one and three years, respectively, after date, with interest at twelve (12) per cent. per annum, and with interest on the interest at two (2) per cent. per month in case of default in payment of such interest, principal and interest payable at Denver in gold coin.

3rd. A deed of trust of the lands in controversy, executed by Harrison Goodwin to David H. Maffat, jr., to secure said promissory notes, bearing even date therewith, bearing a certificate of the acknowledgment thereof by said Harrison Goodwin, at Boulder County, Colorado, before a notary public of that county. This deed provided that in case of default made in the payment of the principal or interest of either of said notes, on application in writing of the legal holder of said notes, the trustee

48 might sell the premises at public auction after giving four (4) weeks' previous notice of the time and place of sale by advertisement in any newspaper published in Boulder County, and from the proceeds pay the principal and interest of said promissory notes, whether due and payable by the tenor thereof or not.

4th. A certain deed of conveyance, bearing date March 29th, 1879, executed by David H. Maffat, jr., as trustee, conveying the said lands to plaintiff, reciting the said deed of trust, and the sale of said lands thereunder in pursuance of the power, and that plaintiff was the purchaser.

This was all the evidence offered or heard on the trial of the issues herein. And thereupon his honor the said judge found the issues herein joined for the plaintiffs and gave judgment accordingly, to which finding and judgment, and each thereof, the said Harrison Goodwin and Elizabeth Goodwin then and there in open court excepted. And because these mat-

ters do not appear by the record herein the said defendants bring this their bill of exceptions and pray his honor the said judge to allow and seal the same and make it a part of the record herein, which is ordered and done accordingly.

(Signed) MOSES HALLETT, [L. S.]
District Judge.

49 (Endorsed:) 269. Circuit court. The Colorado Mortgage, &c., Co. vs. Goodwin. Bill exceptions. Filed May 22, 1880. (Signed) Edward F. Bishop, clerk.

And afterwards, and on, to wit, the 24th day of May, A. D. 1880, there issued out of said court, and under the seal thereof, and in said cause, a writ of possession and fieri facias, which said writ, together with the marshal's return thereon, is in words and figures as follows, to wit:

50 *Writ of possession and fieri facias, U. S. circuit court.*

THE UNITED STATES OF AMERICA,
District of Colorado, ss:

The President of the United States of America to the marshal of the district of Colorado, greeting:

Whereas lately, and at the May term, A. D. 1880, to wit, on the twelfth day of May, A. D. 1880, of the circuit court of the United States for the district of Colorado, by the judgment of the court The Colorado Mortgage and Investment Company of London (Limited) recovered against Elizabeth Goodwin, James R. Mason, Samuel Basher, and Harrison Goodwin for the recovery of the possession of the Southwest one-quarter ($\frac{1}{4}$) of Section five (5), and the East half ($\frac{1}{2}$) of the Southeast one-quarter ($\frac{1}{4}$) of Section six (6), in Township two (2) North of range 69, West of sixth Principal Meridian, besides costs of suit, as appears of record:

Now, therefore, you are hereby commanded to cause said The Colorado Mortgage and Investment Company of London (Limited) to have quiet and peaceable possession of the lands and premises in said judgment described.

And you are further hereby commanded that of the goods and chattels, lands, and tenements of the said Elizabeth Goodwin, James R. Mason, Samuel Basher, and Harrison Goodwin, in your district, you cause to be made the sum of twenty-eight $\frac{05}{100}$ dollars costs, together with all accruing costs.

And have you these monies at the clerk's office of the said circuit court within ninety days from the date hereof, together with this writ, with a return of your doings hereon in what manner you have executed the same.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the said circuit court, at Denver, in said district, this 24th day of May, A. D. 1880, and of our Independence the 104th year.

[SEAL CIRCUIT COURT U. S.] (Signed) EDWARD F. BISHOP,
Clerk,
By , *Deputy Clerk.*

51 This writ received by me this 27th day of May, A. D. 1880.
(Signed) P. P. WILCOX, *Marshal.*

Marshal's return.

DISTRICT OF COLORADO, *ss:*

DENVER, *July 15th*, 1880.

I have duly executed this writ by causing the within-named The Colorado Mortgage and Investment Company of London (Limited) to have quiet and peaceable possession of the within-described premises by placing James R. Mason, assignee and agent of the said The Colorado Mortgage and Investment Company of London (Limited), in possession of the same on the 12th day of July, A. D. 1880, and at the same time removing from the said premises all the household and kitchen furniture, together with all the farming utensils and all other property belonging to the within-named defendants. I hereby further certify that I can find no property of the within-named defendants exempt from execution with which to make the amount of the within execution or any part thereof.

This writ therefore returned served this 15th day of July, A. D. 1880.

(Signed) P. P. WILCOX, *Marshal*,
By , *Deputy Marshal.*

Marshal's fees: Service, $2.00; levying execution, $; advertising property, $; 106 miles travel, @ 15, $15.90; commission on $, $; certificate of purchase, $; total, $17.90. Paid by the plaintiffs.

(Endorsed:) Gen. No. 269. Circuit court of the United States, eighth circuit, district of Colorado. The Colo. Mortgage & Investment Co. vs. Elizabeth Goodwin et al. Writ of possession and fi. fa. Damages, $000; costs, $28.05—total, $. The marshal will collect interest from May 12th, 1880. (Signed) Edward F. Bishop, clerk. Filed this 16' day of July, A. D. 1880. (Signed) Edward F. Bishop, clerk., by , deputy clerk. Hugh Butler, attorney for plaintiff.

52 And afterwards, and on, to wit, the 4th day of October, A. D. 1880, came again the said defendants Harrison and Elizabeth Goodwin, by E. T. Wells, esq., their attorney, and filed in said court and in said cause a certain notice and affidavit as to value of matter in controversy, and the said notice is in words and figures as follows, to wit:

Notice and affidavit.

In the circuit court of the United States.

THE UNITED STATES,
District of Colorado:

THE COLORADO MORTGAGE AND INVESTMENT Company of London (Limited), plaintiff,
vs.
HARRISON GOODWIN, ELIZABETH GOODWIN, James R. Mason, Samuel Basher, defendants.

To JAMES R. MASON, SAMUEL BASHER:

53 GENTLEMEN: Please take notice that we desire to prosecute a

writ of error out of the Supreme Court of the United States directed to the circuit court of the United States for the district of Colorado, to review the judgment which was given in favor of The Colorado Mortgage and Investment Company of London (Limited), plaintiff in the above-entitled cause against the defendants in the above-entitled cause, on the 12th day of May, A. D. 1880, for the recovery of the Southwest quarter of Section five (5) and the East half of the Southeast quarter of Section six (6), in Township two (2) North, of Range sixty-nine (69) West, of the sixth Principal Meridian, and costs, and we desire you to unite with us in said writ of error and in the bond therein.

Very respectfully, your obedient servants,

(S'g'd) HARRISON GOODWIN,
ELIZABETH GOODWIN,
By WELLS, SMITH & MACON,
Their Attorneys.

DENVER, COLORADO, *September* 23, 1880.

(Endorsed:) No. 269. Filed Oct. 4, 1880. (S'g'd) Edward F. Bishop, clerk.

54 And the said affidavit, as to value, is in words and figures as follows, to wit:

Affidavit as to value.

THE UNITED STATES OF AMERICA,
District of Colorado:

John H. Wells, being first duly sworn, says on oath that he resides at Longmont, in the county of Boulder and State of Colorado; that he is and for thirteen years last past has been acquainted with the Southwest quarter of Section five (5) and the East half of the Southeast quarter of Section six (6), in Township two (2) North, of Range sixty-nine (69) West, of the sixth Principal Meridian, in the said county of Boulder; the said premises which, prior to May 12th, A. D. 1880, were occupied by Harrison Goodwin and Elizabeth Goodwin, two of the defendants in this suit mentioned in caption in the foregoing notice; that said premises are at the date of the judgment mentioned in said notice *were* exceeding in value five thousand dollars.

Deponent further saith that on the 29th day of September, A. D. 1880, he delivered a duplicate copy of the notice which is hereto prefixed to each of the defendants James R. Mason and Samuel Basher, and that both of said defendants refused to unite in the writ of error proposed to be sued out, as mentioned in said notice, or to subscribe a bond in
55 said writ of error then and there presented to him for signature.

(S'g'd) JOHN H. WELLS.

Subscribed and sworn to before the undersigned, a notary public in and for said county of Boulder, at said county, this 29th day of September, A. D. 1880.

{ BYRON L. CARR, NOTARY PUBLIC, SEAL, BOULDER CO., COLORADO. } Witness my hand and notarial seat the day and year aforesaid.

(S'g'd) BYRON L. CARR,
Notary Public.

(Endorsed:) No. 269. The Col. Mortg. & Investment Co. v. Goodwin et als. Affidavit to value, & refusal of Mason & Bashor to unite in writ error. Filed Oct. 4, 1880. (S'g'd) Edward F. Bishop, clerk.

And afterwards, and on the same day, to wit, the 4th day of October, A. D. 1880, came again the said defendants Harrison and Elizabeth Goodwin, by their attorney aforesaid, and filed in said court and in said cause their bond, and sued out of said court a writ of error.

56 And the said bond is in words and figures as follows, to wit:

(Copy.)

Appeal bond U. S. court, Colorado.

THE UNITED STATES OF AMERICA,
District of Colorado:

Know all men by these presents, that we, Elizabeth Goodwin, Harrison Goodwin, as principal, and E. T. Wells, as surety, are held and firmly bound unto the Colorado Mortgage and Investment Company of London (Limited) in the full and just sum of two hundred & fifty dollars, to be paid to the said Colorado Mortgage and Investment Company of London (Limited), to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this 29th day of September, in the year of our Lord one thousand eight hundred and eighty.

Whereas, lately at the May term, A. D. 1880, of the circuit court of the United States for the district of Colorado, in a suit pending in said court, between the Colorado Mortgage and Investment Company of London (Limited), plaintiff, and the said Elizabeth Goodwin, Harrison Goodwin, and one James R. Mason and one Samuel Basher, defendants, judgment was rendered against the said Elizabeth, Harrison, James, and Samuel, and the said Elizabeth Goodwin, Harrison Goodwin, having obtained a writ of error of the said Supreme Court to reverse the judgment in the aforesaid suit, and a citation directed to the said Colorado Mortgage and Investment Company of London (Limited), citing and admonishing it be and appear at a Supreme Court of the United States, to be held at Washington on the 2nd Monday of October next:

Now, the condition of the above obligation is such, that if the said Elizabeth and Harrison shall prosecute said writ to effect, and answer all damages and costs if they fail to make good their plea, then the above obligation to be void; else to remain in full force and virtue.

(S'g'd)	ELIZABETH GOODWIN.	[SEAL.]
(S'g'd)	HARRISON GOODWIN.	[SEAL.]
(S'g'd)	E. T. WELLS.	[SEAL.]

Approved.
(S'g'd) MOSES HALLETT,
District Judge.

57 *Justification.*

THE UNITED STATES OF AMERICA,
District of Colorado, ss:

and , sureties, on the within bond, being each first duly sworn, depose and say that they are each worth in the sum below set opposite their names, respectively, that is to say: As to dollars, as to dollars, as to dollars, over and above all their just debts and liabilities, and in property subject to levy and sale upon execution.

Subscribed and sworn to before me, at Denver, this day of , A. D. 18 .

, *Clerk,*
By , *Deputy Clerk.*

(Indorsed:) Gen. No. 269. Circuit court of the United States, district of Colorado. Harrison Goodwin, Elizabeth Goodwin, plaintiff, in error, vs. The Colorado Mortgage & Investment Co. Appeal bond. $250.00. Filed in the circuit court, U. S., this 4th day of Oct., A. D. 1880. (S'g'd) Edward F. Bishop, clerk, by , deputy clerk.

58 And the said writ of error is next following hereto attached, to wit:

Writ of error to court U. S., district of Colorado.

THE UNITED STATES OF AMERICA.

UNITED STATES OF AMERICA,
District of Colorado, ss:

The President of the United States to the judges of the circuit court of the United States, for the district of Colorado, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the circuit court, between The Colorado Mortgage and Investment Company of London (Limited), and Harrison Goodwin, Elizabeth Goodwin, James R. Mason, Samuel Basher, manifest error hath happened, to the great damage of the said Harrison and Elizabeth, as by their complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 2nd Monday of October, A. D. 1880, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 4th day of October, in the year of our

Lord one thousand eight hundred and eighty, and of the Independence of the United States the 105' year.

[SEAL.] EDWARD F. BISHOP, *Clerk.*

Allowed by—

MOSES HALLETT,
Dist. Judge.

59 *Return.*

THE UNITED STATES OF AMERICA,
District of Colorado, ss:

In obedience to the command of the within writ I herewith transmit to the honorable Supreme Court of the United States a duly certified transcript of the record and proceedings in the within-entitled case, together with all things concerning the same.

Witness my hand and the seal of said circuit court, at Denver, in said district, this day of Oct., A. D. 1880.

[SEAL.] EDWARD F. BISHOP, *Clerk.*
By , *Deputy Clerk.*

(Indorsed:) Gen. No. 269. Supreme Court of the United States. Harrison & Elizabeth Goodwin, impleaded, plaintiff' in error, vs. Col'o Mortg. & Investment Co. Writ of error to circuit court, U. S. district of Colorado. Filed in court of the U. S. this day of , A. D. 18 . , clerk, by , deputy clerk. Wells, Smith & Macon, attorneys for plaintiff, in error.

60 And thereupon a citation was issued and returned and is next following hereto attached, to wit:

Citation U. S. court.

THE UNITED STATES OF AMERICA,
District of Colorado:

The United States of America to the Colorado Mortgage and Investment Company of London (Limited,) greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the 2d Monday of October, A. D. 1880, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Colorado, wherein Harrison Goodwin and Elizabeth Goodwin (lately impleaded in the said circuit court with one James R. Mason and one Samuel Basher), are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff' in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Moses Hallett, judge of the circuit court of the United States for the district of Colorado, this 4' day of October, in the year of our Lord one thousand eight hundred and eighty.

MOSES HALLETT,
Dist. Judge.

61 *Proof of service.*

THE UNITED STATES OF AMERICA,
District of Colorado, ss:

On this 4th day of October, A. D. 1880, personally appeared E. T. Wells before me, the subscriber, clerk of the circuit court of the United States for the district of Colorado, and makes oath that he delivered a true copy of the within citation to Hugh Butler, esq., the attorney of record of the within-named The Colorado Mortgage and Investment Company of London (Limited), in the cause lately pending in the circuit court aforesaid, as within mentioned.

E. T. WELLS.

Sworn to and subscribed before me this 4th day of October, A. D. 1880.

EDWARD F. BISHOP, *Clerk,*
By , *Deputy Clerk.*

(Indorsed:) Gen. No. 269. Circuit court of the United States, district of Colorado. Harrison & Eliz'h Goodwin, et al., plaintiff' in error, vs. Colo. Mortg. & Investment Co., defendant in error. Citation. Filed in court of the U. S. this day of , A. D. 18 . clerk, by deputy clerk. Wells, Smith & Macon, attorney' for plaintiff' in error.

62 UNITED STATES OF AMERICA,
District of Colorado, ss:

I, Edward F. Bishop, clerk of the circuit court of the United States for the district of Colorado, do hereby certify the above and foregoing to be a true, perfect, and complete transcript and copy of the record and proceedings heretofore had in said court, and in a certain cause lately in said court pending, wherein the Colorado Mortgage & Investment Co. of London is plaintiff, and Elizabeth Goodwin et als. are defendant's as fully and completely as the same still remain filed and of record in my office.

In testimony to the above, I do hereunto sign my name and affix the seal of said court, at Denver, in said district, this 4th day of Oct., A. D. 1880.

[SEAL.] EDWARD F. BISHOP, *Clerk.*

Clerk's fees: Preparing trans', 114 fol. @ 10c. & cer. 35—$11.75. Paid by Wells, S. & M. for pl'ffs in error.

(Indorsement on cover:) No. 177. Harrison Goodwin and Elizabeth Goodwin, plaintiffs in error, vs. The Colorado Mortgage and Investment Company of London (Limited). Colorado C. C. U. S. Filed 25th October, 1880.

110-1

Supreme Court of the United States.

OCTOBER TERM, 1883.

ELIZABETH GOODWIN AND HARRISON GOODWIN,
Plaintiffs in Error.

No. 177.

VERSUS

THE COLORADO MORTGAGE & INVESTMENT COMPANY OF LONDON, (LIMITED).
Defendant in Error.

Assignment of Errors.

And, the said Elizabeth Goodwin and Harrison Goodwin, by E. T. Wells, their attorney, come now and say that in the record and proceedings aforesaid of the said Circuit Court, there is manifest error in this, to-wit:

First—That the said Circuit Court sustained the demurrer of the said Colorado Mortgage & Investment Company of London, (Limited,) to the amended answer of the said Elizabeth Goodwin.

Second—Also in this, to-wit: That the said Circuit Court sustained the demurrer of the said Colorado Mortgage & Investment Company of London, (Limited), to the third defense in the amended answer of the said Elizabeth Goodwin and Harrison Goodwin, filed in the said Circuit Court on the 11th day of May, A. D. 1880.

Wherefore, for the errors aforesaid, and for the manifold other error in the said record, and judgment appearing the said Elizabeth Goodwin and Harrison Goodwin pray that the judgment of the said Circuit Court, be reversed, annulled, and that they be restored to all things which by virtue of the said judgment they have lost, and they also pray judgment for their costs.

E. T. WELLS,
For Plaintiffs in Error.

110—1

FILED
NOV 5 1883
JAMES H. McKENNEY, CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1883.

HARRISON GOODWIN AND ELIZABETH GOODWIN,
Plaintiffs in Error.

No. 177.

VERSUS

THE COLORADO MORTGAGE & INVESTMENT COMPANY OF LONDON, (LIMITED).
Defendant in Error.

BRIEF FOR PLAINTIFFS IN ERROR.

E. T. WELLS,
For Plaintiffs in Error.

Supreme Court of the United States.

OCTOBER TERM, 1883.

HARRISON GOODWIN AND ELIZABETH GOODWIN,
Plaintiffs in Error.

No. 177.

VERSUS

THE COLORADO MORTGAGE & INVESTMENT COMPANY OF LONDON, (LIMITED).
Defendant in Error.

BRIEF OF PLAINTIFFS IN ERROR.

STATEMENT OF FACTS.

The defendant in error brought its action of ejectment in the Circuit Court, for the District of Colorado, against the defendants and others.

The plaintiff in error, (Record 3–4) interposed an answer denying the title of the plaintiff, now defendant in error, and averring title in Harrison Goodwin. The defendant, Elizabeth Goodwin, also interposed her separate answer, as follows: (Record 5.) That on the 23d day of February, 1878, and long before that, the defendant, Harrison Goodwin, was, ever since hath been, and still is a householder and the head of a family; that defendant was, and ever since hath been, and still is the lawful wife of the said Harrison; that on the day and year aforesaid, and long before, and ever since, this defendant and the said Harrison as man and wife were residing together upon and occupying the same premises in the complaint described at their homestead, and on the same day and year aforesaid, the said Harrison, while this defendant was together with him so occupying the said premises, executed a certain mortgage deed of the said premises to one D. H. M., for securing certain moneys in the said mortgage deed, recited to be due and owing by the said Harrison to the plaintiff, and by virtue of the said mortgage deed and a certain conveyance executed by the

by the said D. H. M. unto the plaintiff under and by pretense of some power and authority contained in said mortgage deed, and not otherwise the plaintiff claims the said premises; that, in fact, the officer taking the acknowledgment of said mortgage deed did not fully apprise this defendant of her right in respect to the said premises nor of the effect of said mortgage deed, nor did this defendant freely and voluntarily, separate and apart from her husband, or otherwise sign or acknowledge the said mortgage deed.

And to this answer, by amendment, (Record 7) was added an averment, as follows:

"That at the time of the execution of the said mortgage deed, the plaintiff well knew that the said lands and premises were occupied by the said Harrison and Elizabeth as their homestead, and that the said Harrison was a householder, and that this defendant was the lawful wife of the said Harrison and residing with him.

To this amended answer a general demurrer was sustained. (Record 9.)

By their amended answer, (record 14–16) defendants set up title in the defendant, Harrison Goodwin, and that "being so entitled thereunto, the said Harrison on or about the 28th day of February, A. D. 1878, by his certain writing in the similitude of a deed upon trusts by him assumed, and pretended to be executed at the County of Boulder in the State of Colorado, assumed and pretended to convey the said premises unto one D. H. M., in trust to secure to the plaintiff certain moneys, and afterwards on or about the 29th day of March last past, the said D. H. M., by his certain deed of conveyance assumed, and pretended to convey the whole of the said lands and premises to the plaintiff, by means of which said last mentioned pretended conveyance and not otherwise, plaintiff claims to be entitled to the possession of the said premises, and defendants, in fact, say that the plaintiff before and at the time of the execution of the said pretended conveyance, of the said Harrison unto the said D. H. M. was, and still is foreign corporation, not organized or existing under any law of the State of Colorado, but organized and existing under the statutes of the United Kingdom of Great Britain, etc., and being such foreign corporation, the said plaintiff on or about the 29th day August, A. D. 1877, caused to be

filed in the office of the Secretary of State of the State of Colorado, and in the office of the Recorder of Arapahoe County, a certain certificate in words and figures, as follows, to-wit: "We, the undersigned, president and secretary of the Colorado Mortgage and Investment Company of London, Limited, hereby certify that the principal place where the business of said corporation shall be carried on in the State of Colorado, shall be at Denver, in the County of Arapahoe in said State, *and that the general manager of said corporation, residing at said principal place of business is, their agent upon whom process may be served* in all suits commenced against ——— corporation."

Acknowledged, etc.

And save as aforesaid the said plaintiff hath never at any time hitherto caused to be filed with the Secretary of the State of Colorado, nor in the office of the recorder of any county in said State, any certificate signed by the president and secretary of said plaintiff, or acknowledged, designating the principal place where the business of the said corporation shall be carried on in this State, or any authorized agent in this State, residing at its principal place of business, upon whom process may be served, nor hath plaintiff at any time hereto filed in the office of the recorder of deeds of the said County of Boulder, any such certificate whatsoever signed by the president or secretary of the said plaintiff, designating the principal place where the business of said plaintiff will be carried on in this State, or any authorized agent or agents in this State, residing at its principal place of business upon whom process may be served;—and the defendants say that the said pretended conveyance of the said Harrison so assumed and pretended to be executed to the said D. H. M., was executed and delivered at the said Counry of Boulder and not elsewhere, and the moneys therein recited to be payable to the plaintiff, were moneys by the said plaintiff, lent to the said Harrison at the said County of Boulder, contrary to the constitution of the State of Colorado, and the statute in such case made and provided.

A demurrer was interposed to all of this answer, save the last paragraph, (Record 17), which demurrer was sustained. (Record 19.)

By the Statute of Colorado, in force at the time when the mortgage in question was executed, and for many years before that it was provided as follows:

Section 1. Every householder in the State of Colorado, being the head of a family, shall be entitled to a homestead, not exceeding in value the sum of two thousand dollars, exempt from execution and attachment arising from any debt, contract or civil obligation entered into or incurred after the first day of February, in the year of our Lord, eighteen hundred and sixty-eight.

Sec. 2. To entitle any person to the benefits of this act, he shall cause the word "Homestead" to be entered of record on the margin of his recorded title to the same.

Sec. 3. Such homesteads shall only be exempt while occupied as such by the owner thereof, or his or her family.

Sec. 4. When any person dies, seized of a homestead leaving a widow, * * * such widow * * * shall be entitled to the homestead.

Sec. 6. Nothing in this act shall be construed to prevent the owner of any homestead from mortgaging the same, provided no such mortgage shall be binding against the wife, * * * who may be occupying the premises with him, unless she shall freely and voluntarily, separate and apart from her husband, sign and acknowledge the same, and the officer taking such acknowledgment shall fully apprise her of her rights, and the effect of signing such mortgage. Gen. Laws, Col., 1877, p. 505.

Other sections provide for the determination of the value in case the creditor supposes the same to exceed the statutory limit.

A further statute, also in force long before the execution of the mortgage relied upon by the plaintiff, provided as follows:

"Foreign corporations shall, before they are authorized or permitted to do any business in this State, make and file a certificate signed by the president and secretary of such corporation, duly acknowledged, with the Secretary of State and in the office of the recorder of deeds of the county in which such business is carried on, designating the principal place where the business of such corporation shall be carried on in this State, and an authorized agent or agents in this State, residing at its principal place of business upon whom process may be served. Gen. Laws, Col., 1877, p. 151, Sec. 213.

POINTS AND AUTHORITIES.

I.

The Circuit Court erred in sustaining the demurrer to the separate answer of the defendant, Elizabeth Goodwin.

This answer, as the Court will see, sets forth all the requirements of the statute, to entitle the wife to the benefit of the exemption, except one. It is averred that Harrison Goodwin was a householder and the head of a family residing at Colorado, upon the premises in question with the defendant, Elizabeth, who was then and still his lawful wife; and, that they as man and wife were residing upon and occupying the same premises in the complaint described; that the officer, taking the acknowledgement of the mortgage did not apprise her of her rights and that she did not voluntarily and separate and apart from her husband or otherwise sign and acknowledge the said mortgage.

It is not, however, averred that the defendant, Harrison Goodwin, had ever caused the word '*homestead*' to be inscribed upon the record of his title to the premises, as apparently required by the second section of the statute.

It is submitted with confidence, however, that the purpose of this requirement of the statute was not to indicate a selection or appropriation of the practicular premises as a homestead,—such selection and appropriation was in the nature of things effected and indicated by the actual, manifest, notorious fact of occupancy,—but to afford record notice to creditors, and third persons having no actual knowledge of the fact of occupancy or of the particular description of the lands occupied.

There has been no construction of this statute by the courts of the State, and this, we submit, is the only reasonable or sensible interpretation which can be given to it. And, if this is the true interpretation of the enactment, then the actual notice which the answer avers, supplies and excuses the constructive notice contemplated by the record.

II.

The Court erred in sustaining the demurrer to the amended answer of the two defendants, filed on the 11th day of May, A. D. 1880. (Record 14.)

The statute above quoted prohibits foreign corporations from doing any business until they shall have filed in the office of the secretary of State and in the office of the recorder of each county, a certificate

setting forth their principal place of business and the name of an agent residing thereat, upon whom process against them may be served. This is required "before they are authorized or *permitted to do any business.*"

And so the constitution of the State of Colorado provides, (Art. XV., Sec. 10) that no foreign corporation shall *do any business* in this state 'without having one or more known places of business, and an authorized agent in the same upon whom process may be served.'

The corporation had no power to contract in the State, until it had complied with these terms.

The provision of the statute, and the provision of the constitution also, are a positive prohibition upon the exercise of any corporate powers, whatever. The words of the act are mandatory and its purpose apparent.

Foreign corporations might have been altogether excluded,—and if admitted to do business within the limits of the State, such conditions as the wisdom or caprice of the Legislature may prescribe, must be observed. The consent given by the act in question, was upon a condition precedent. Until this condition be performed the corporation is not a corporation even *de facto*, within the limits of Colorado, and all attempts by it to exercise its corporate powers are contrary to law and mere nullity.

In re Comstock, (5 Sawy., 219).
Williams vs. Cheney, (3 Gray, 222).
Roach vs. Ladd, (1 Allen, 441).
National Ins. Co. vs. Pursel, (10 Allen, 232).
R. S. Ins. Co. vs. Slaughter, (20 Ind., 520).
Cincinnati Mut. Co. vs. Rosenthal, (55 Ill., 85).
Ætna Ins. Co. vs. Harvey, (11 Wis., 395).
Lamb vs. Lamb, (13 Bank Reg. 19).
Utley vs. Clark, Gardner Co., (4 Col., 370).

In the case last cited, the Supreme Court of Colorado, considering the identical statute in question, say: "The statute is prohibitory in its terms. They shall file the designated certificate before they are authorized or permitted to do any business in this state." And in the same connection the Court say: "A corporation does business by the

exercise of its power to contract, its power to acquire and hold property, real and personal and like powers."

So in Cooper Manufacturing Co. vs. Ferguson, (4 Fed. Rep., 498).

The learned District Judge, before whom the case at bar was tried below, following his former ruling, disregarded the statute; while the Circuit Judge was of the opinion that the corporation plaintiff in that case could not recover for goods manufactured and sold without compliance with the statute, although it had never assumed to do general business within the State *or to exercise its corporate powers in any other instance.*

All the cases before cited, will, it is believed, be found to sustain the Supreme Court of Colorado in its declaration that "*a corporation does business by the exercise of its power to contract.*" They will also uphold the learned Circuit Judge in his decision before cited, that there needs nothing habitual in the attempted exercise of the corporate powers to bring the case within the terms of the statute; that the first act of buying, selling or lending, is as much a violation of the statute, and as entirely invalid and void as the second; or any that follows.

It is insinuated or suggested by the demurrer, which was sustained by the court below, (Record 17) that a certificate property, filed in one county of the State, where the corporation was accustomed to habitually transact its business might suffice to protect it in the case of occasional transations in other counties. But, the answer shows, (Record 15) that there was never any certificate conformable to the statute filed anywhere.

The Court will not fail to observe that the only designation in the certificate, which was filed, of the officer, upon whom process may be served is that he shall be the 'general manager of said corporation.'

But, this is no compliance with the statute. This is no designation. The purpose of the act is that the person upon whom process may be served, shall be named.

This certificate seems to have been artfully framed with a view to suppress the very information which the statute requires, and to open a door in every action to a plea in abatement, denying the sufficieney and propriety of the service.

The statute intends there shall be of record at the office of the secretary of the State, and in every county in the State, authentic evidence of the particular individual upon whom process against every foreign corporation may effectually be served. But, what evidence does this certificate afford as to who is the general manager of the corporation, or as to whether, in fact, there is any such official?

It may be supposed that any office, with a title so broad as 'General Manager,' will exercise functions of proportionate publicity and importance; but, if this certificate is to be received as a compliance with the statute, who shall say that a certificate designating a subordinate will not suffice? Why may not the corporation designate some underling, whose duties will never bring him into public relations, and whose very existence and personality cannot by the most diligent inquiry be ascertained? What is to prohibit the corporation from conferring upon some official, a double title, one of which may be disclosed to the public, and the other hidden upon the records of the corporation? What is to prevent it from conferring upon some official, an unusual and unheard of designation which will in no manner describe him or identify him to the officers, charged with the service of process?

Clearly these questions must be answered in the negative.

We submit, therefore, in every point of view, there was an entire failure on the part of this corporation to observe the requirements of the statute:

III.

The deed to Moffat in trust was void for the incapacity of the beneficiary.

In order to the efficacy of any grant there must be a grantee in being, capable of taking.

3 Wash. R. P., 266, Martind Conv., Sec. 69.

A patent to one not in being is void.

McDonald's Heirs vs. Smalley, (6 Pet., 261).

Thomas vs. Wyatt, (25 Mo., 24).

So a deed to an uncorporated association or to the officers or trustees of such association.

Jackson vs. Coney, (8 John, 301).
Hornbrook vs. Westbrook, (9 John, 94).
Sloan vs. McConahey. (4 O., 169).
Barker vs. Wood, (9 Mass., 421).
Harriman vs. Southhard, (16 Ind., 190).
Donthett vs. Stimson, (63 Mo., 268).
German Association vs. Scheuler, (20 Min., 331).

The Statute is not to be evaded by assuming to receive the legal title to trustees, for one cannot be *cestui que trust* in lands, the legal title to which they are unable to take.

Perry on Trusts, Sec. 63.

"Land which the Company cannot hold in its own name, it cannot hold in the name of another."

Coleman vs. The San Rafael Co., (49 Cala., 518).

E. T. WELLS,

For Plaintiffs in Error.